

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 38 of 1979

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHAVNAGAR NAGAR PALIKA

Versus

VARTEJ SOAP FACTORY

Appearance:

MR JR NANAVATI for Appellant

MR PM RAVAL for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 20/01/97

ORAL JUDGEMENT

1. The present appeal is one under section 100, CPC, filed by Bhavnagar Nagarpalika-original defendant, wherein the respondent is the original plaintiff.

3. The relevant and pertinent facts, in brief, are

as under:

3.1 The respondent-plaintiff had filed suit in the court of Civil Judge, Junior Division, Bhavnagar for a declaration that the defendant-Municipality could charge octroi duty on Linseed Oil, Palm Fatty Acid Oil, Tallow and Tallow Fatty Acid Oil, only according to the rates prescribed under item 28 of Schedule B of the Bhavnagar Octroi Rules, and not under item 85 of Schedule A of the said rules.

3.2 The trial court, after raising the appropriate issues and appreciating the evidence on record, partly decreed the plaintiff's suit, and passed a declaratory decree to the effect that Palm Fatty Acid Oil and Linseed Oil could be subjected to octroi only under item 28 of Schedule B of the Octroi Rules and Byelaws, and granted the consequential reliefs as prayed for in respect of the said declaration. The plaintiff's suit as regards the declaration in respect of the other two items was dismissed. The plaintiff as also the defendant being aggrieved by the said decree, each preferred an appeal and the two appeals were heard and decided by a common judgement of the District Court.

3.3 The lower appellate court, after reappreciating the evidence on record, dismissed the appeal filed by the Municipality, and partly allowed the appeal filed by the original plaintiff, by holding that Tallow Fatty Acid Oil, Linseed Oil and Palm Fatty Oil are chargeable only under item 28 of Schedule B and not covered nor chargeable under item 85 of Schedule A of the Octroi Rules, etc. Being aggrieved by the judgement and decree of the lower appellate court, Bhavnagar Municipality has filed the present appeal. The original plaintiff has filed Cross Objections to the said appeal of Bhavnagar Municipality, in respect of the single item which has been held by the two courts below not to be covered under item 28 of Schedule B.

4. First of all it must be noted that the appropriate classification for purposes of octroi is the basic question involved herein, and that the classification in dispute is in respect of only the three items, as under:

1. Palm Fatty Acid Oil
2. Linseed Oil
3. Tallow Fatty Acid Oil

4.1 The next aspect which must be borne in mind is

that according to the plaintiff, these items are chargeable to octroi only under item 28 of Schedule B, as against which the case of the appellant, both before the trial court as well as before the lower appellate court was that the same are chargeable under item 85 of Schedule A. The contention even before me in the Second Appeal by the appellant is to the same effect.

5. Having heard the learned counsel for the parties and having examined in detail the judgements of the lower appellate court as also the trial court, I am satisfied that what is involved here is not a question of law, but is a dispute only on questions of fact.

6. It is pertinent to note that the relevant entry at item no.85 covers "Hydrogenated groundnut oil and ghee of mutton tallow".

7. Obviously, none of the actual products whose classification is under dispute can by any stretch of imagination be called "Hydrogenated groundnut oil". The dispute then, is confined and restricted to whether the disputed products can be covered under the description of "ghee of mutton tallow".

8. After discussing the oral and documentary evidence on record, after a total consideration of the interpretation to the relevant phrase put by the trade, the common names for these products used by the trade, and the usage and nomenclature normally adopted in commerce to these items, both the courts below have arrived at a finding of fact that mutton tallow is includable in item 85 of Schedule A, whereas the same could not be covered under item 28 of Schedule B. On the other hand, there are equally positive findings recorded by both the courts that the three items of dispute, which are enumerated hereinabove, are not includable under item 85 of Schedule A, but would be covered under item 28 of Schedule B.

9. It may be noted here that the lower appellate court has only made a small distinction, again on facts, from the observation and findings of the trial court in respect of Tallow Fatty Acid Oil. In respect of only this particular commodity, the lower appellate court has found that Tallow i.e. mutton tallow is entirely separate and distinct both physically and commercially from mutton tallow ghee, as also separate and distinct from Tallow Fatty Acid Oil. Thus, the lower appellate court modified the finding of the trial court in respect of this commodity and held that Tallow Fatty Acid Oil

also cannot be included or be held to be covered by item 85 of Schedule A.

10. Thus, to summarise, the factual findings recorded by the trial court, and as they stood confirmed and partly modified by the lower appellate court, lead to the net effect that Tallow Fatty Acid Oil, Linseed Oil and Palm Fatty Oil would not be covered under item 85 of Schedule A, and would be chargeable only under item 28 of Schedule B. On the basis of this factual finding, the original plaintiff was found to be entitled to a refund of Rs.334.72 on account of the difference, and a consequential mandate was issued upon the original defendant to refund the said amount.

11. As a result of the hearing and the present discussion it becomes obvious that the entire controversy is entirely factual and no substantial question of law arises therefrom. In spite of the best efforts of the learned counsel for the respective parties I am unable to take any other view in the matter.

12. Consequently the present appeal, as also the cross objections filed therein by the present respondent, are both dismissed, with no order as to costs.
